

(ii) Before the date described in paragraph (g)(1)(i) of this section, if either the grantee or HUD determines that the displacement resulted directly from rehabilitation, acquisition or demolition for the project;

(iii) By a tenant-occupant of a dwelling unit after the initiation of negotiations, if:

(A) The tenant has not been provided a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the project following the completion of the project at a rent, including estimated average utility costs, that does not exceed the greater of:

(I) The tenant's rent and estimated average utility costs before the commitment; or

(2) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income if the tenant is not low-income; or

(B) The tenant has been required to relocate temporarily, but:

(I) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in rent and utility costs, or other conditions of the temporary relocation are not reasonable, and

(2) The tenant does not return to the project; or

(C) The tenant is required to move to another unit within the project but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move or other conditions of the move are not reasonable.

(2) A person does not qualify as a displaced person, if:

(i) The person has been evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement, and the grantee or State recipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

(ii) The person moved into the property after the owner's submission of the request for assistance but, before

commencing occupancy, received written notice of the owner's intent to terminate the person's occupancy for the project; or

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) The grantee or State recipient determines that the person was not displaced as a direct result of rehabilitation, acquisition or demolition of the project, and the HUD Field Office concurs in that determination.

(3) The grantee may, at any time, ask HUD to determine whether a specific displacement is or would be covered by these rules.

#### § 511.15 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR part 35, subpart B, and are applicable to rehabilitated projects with assistance provided under this part.

(b) *Notification of hazards of lead-based paint poisoning.* (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR part 35, subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by 24 CFR part 35, subpart A.

(2) For properties constructed prior to 1978, owner-occupant applicants for rehabilitation assistance provided under this part and tenants of projects rehabilitated with assistance provided under this part shall be notified:

(i) That the project may contain lead-based paint;

(ii) Of the hazards of lead-based paint;

(iii) Of the symptoms and treatment of lead-based paint poisoning;

(iv) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);

(v) Of the advisability and availability of blood lead level screening for children under seven years of age; and

(vi) That in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in projects assisted under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR part 35, subpart C. Because of 1988 and 1989 amendments to the Lead-Based Paint Poisoning Prevention Act as well as because of advancements in testing and abatement technology derived from HUD-sponsored of advancements in testing and abatement technology derived from HUD-sponsored studies and demonstrations, it is anticipated that subpart C will be amended. Pending such amendment the following interim provisions (§§ 511.15 (c)(1) through (c)(9)) will be followed pursuant to the authority in 24 CFR 35.24(b)(4). Publication of a revised 24 CFR part 35 will remove these interim provisions.

(1) *Definitions*—(i) *Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

(ii) *Chewable surface.* All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding wood-work.

(iii) *Defective paint surface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

(iv) *Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 µg/dl (micrograms of lead per deciliter of whole blood) or greater.

(v) *Lead-based paint surface.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm<sup>2</sup>.

(2) *Inspection and testing*—(i) *Defective paint surfaces.* The grantee or State recipient shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the project is being inspected for rehabilitation. Defective paint conditions will be specified for correction as part of the assisted rehabilitation.

(ii) *Chewable surfaces.* The grantee or State recipient shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm<sup>2</sup> or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in § 511.15(c)(2)(ii), in the case of a residential structure constructed before 1978, the grantee or State recipient may forego testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

(3) *Abatement actions.* (i) For inspections performed under § 511.15(c)(2)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under § 511.15(c)(2)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee or State recipient may, or may permit the owner to, abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(4) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(5) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, *e.g.*, 40 CFR parts 260 through 271.)

(6) *Tenant protection.* The grantee or State recipient shall assure that the owner and any rehabilitation contractors shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process.

(7) *Records.* The grantee or State recipient shall keep a copy of each notification, inspection, and/or test report required by this section for at least three years. The grantee or State recipient shall provide to the local Public Housing Authority a copy of these documents if the housing unit is or will be occupied by a section 8 assisted family.

(8) *Monitoring and enforcement.* HUD Field Office monitoring of rehabilitation programs under the Community Planning and Development Monitoring Handbook (6509.2 REV 4) requires monitoring for compliance with applicable program requirements for lead-based paint. In cases of noncompliance, HUD may impose conditions or sanctions on grantees or State recipients in accordance with this part to encourage prompt compliance.

(9) *Compliance with other program requirements, Federal, state and local laws—(i) Other program requirements.* To the extent that rental rehabilitation grant amounts are used in conjunction with other HUD program assistance which may have more or less stringent

lead-based paint requirements, the more stringent requirements shall apply.

(ii) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may deem compliance with such comparable State or local requirements and procedures to constitute compliance with this section. The HUD Field Office may make this determination initially, subject to monitoring review by, or appeal to, the Regional Office and Headquarters.

(iii) *Grantee or State recipient responsibility.* Nothing in this section is intended to relieve any grantee or State recipient in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(Approved by the Office of Management and Budget under control number 2506–0080)

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#### § 511.16 Other Federal requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, Grantees and, where applicable, State recipients shall comply with the following requirements:

(a) *Labor standards.* All laborers and mechanics (except laborers and mechanics employed by a State or local government acting as the principal contractor on the project) employed in the rehabilitation of a project assisted under the Rental Rehabilitation Program that contains 12 or more dwelling units after rehabilitation shall be paid wages at rates not less than those prevailing on similar rehabilitation in the locality, if such a rate category exists, or other appropriate rate as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40